

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LARENZO PINKEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83336-COA

FILED

JUN 13 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lorenzo Pinkey appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Pinkey argues that the district court erred by denying his November 21, 2019, petition and later-filed supplement without first conducting an evidentiary hearing. To demonstrate ineffective assistance of defense counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by

the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Pinkey claimed that his counsel was ineffective for advising him to enter a guilty plea so that he could avoid potential new charges without actually investigating the facts or viewing discovery concerning those potential charges. Pinkey contended he was not able to properly evaluate the plea offer without access to evidence concerning the potential new charges. A petitioner alleging that an attorney should have conducted an investigation must demonstrate what the results of the investigation would have been and how it would have affected the outcome of the proceedings. *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

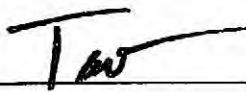
Pinkey's bare claim failed to specifically allege what investigation counsel failed to undertake and what the results of any such investigation would have been. In addition, the trial-level court conducted an evidentiary hearing concerning Pinkey's presentence motion to withdraw his guilty plea, and counsel testified about his advice to Pinkey concerning the plea agreement. Counsel testified that there was significant evidence of Pinkey's guilt for the charges in this matter and he was also aware that Pinkey was under investigation for potential new charges. Counsel testified that he had not been able to conduct an independent investigation into the potential new charges but he was concerned about them. Counsel stated that he discussed the potential new charges with Pinkey and Pinkey decided it was in his best interest to accept a plea offer that encompassed the already-charged offenses and any potential new charges. Pinkey also received a substantial benefit by accepting the plea offer because the State agreed not to pursue sentences of life in prison in exchange for Pinkey's guilty plea to the charged offenses.

In light of the information contained within the record, Pinkey did not demonstrate that counsel's performance fell below an objective standard of reasonableness. Pinkey also failed to demonstrate a reasonable probability that he would have refused to plead guilty and would have insisted on proceeding to trial had counsel investigated the potential new charges or discussed the plea agreement in a different manner. Therefore, we conclude that the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Pinkey claimed that his counsel was ineffective for failing to pursue a direct appeal in order to challenge the denial of his motion to withdraw guilty plea. "[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction." *Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011). Pinkey did not claim he asked counsel to file an appeal, and he did not allege he expressed the type of dissatisfaction with his conviction which would have required counsel to file a notice of appeal. Further, Pinkey specifically waived his right to appeal in his guilty plea agreement. Accordingly, Pinkey did not demonstrate that counsel's performance fell below an objective standard of reasonableness. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Ronald J. Israel, District Judge  
Law Office of Betsy Allen  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk